

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

Florida Power & Light Company

Docket Nos. ER04-520-000,
ER04-520-001, and
ER04-520-002

ORDER CONDITIONALLY ACCEPTING FOR FILING REVISIONS
TO TRANSMISSION SERVICE AGREEMENT, AS MODIFIED

(Issued May 21, 2004)

Introduction

1. In this order, we conditionally accept for filing, as modified, proposed revisions to Florida Power & Light Company's (FPL) transmission service agreement. This order benefits customers by reducing the network transmission service rate to a customer and ensures that all the terms and conditions of the service comply with the Federal Power Act (FPA).¹

Background

2. On February 2, 2004, as supplemented on February 4, 2004, FPL filed a Letter Agreement and proposed revisions to a Network Integration Transmission Service Agreement (NITSA) with Seminole Electric Cooperative, Inc. (Seminole). The Letter Agreement and revised NITSA set forth the terms and conditions of a transmission credit offset to Seminole's network transmission service charge for certain transmission facilities of Seminole and Lee County Electric Cooperative, Inc. The Letter Agreement and proposed NITSA revisions provide, among other things, for a transmission credit of

¹ 16 U.S.C. § 824d (2000).

\$400,000/month (\$4.8 million annually) against Seminole's network transmission service charge.² FPL requests waiver of the Commission's prior notice requirement so that the NITSA is effective as of January 1, 2004.

3. Notice of FPL's February 2, 2004 filing was published in the Federal Register, 69 Fed. Reg. 6965, (2004) with comments, protests or interventions due on or before February 23, 2004. Notice of FPL's February 4, 2004 filing was published in the Federal Register, 69 Fed. Reg. 7923, (2004) with comments, protests or interventions due on or before February 25, 2004. Notice of FPL's March 23, 2004 filing was published in the Federal Register, 69 Fed. Reg. 18,069 (2004) with comments, protests or interventions due on or before April 14, 2004. Seminole filed a timely motion to intervene without substantive comment.

4. On March 4, 2004, the Director of the Division of Tariffs and Market Development- South, Office of Markets, Tariffs and Rates, issued a letter order requesting additional information regarding section 9 of the NITSA. This section states:

The Parties recognize that pursuant to various provisions of this Service Agreement, the Attachments hereto, and the Network Operating Agreement, FPL may seek to recover certain costs directly from Customer, which cost recovery must be pursuant to an appropriate filing under section 205 of the Federal Power Act. Notwithstanding this requirement, if FPL and Customer mutually agree that the Customer shall pay such costs and agree to the amount of such costs, FPL may accumulate such cost pursuant to a work order executed by the Parties and bill Customer for agreed-upon charges so accumulated without making a section 205 filing; provided, however, should a dispute arise regarding any such accumulation and billing of costs, FPL shall, upon Customer's request, make a section 205 filing to resolve such dispute. [Emphasis added.]

On March 23, 2004, FPL responded stating that no work orders had been issued and no charges had been collected under this provision in the previous 24 months and that there were no foreseeable work orders in the coming year. Further, FP&L stated that section 9 had no relationship to the proposed revisions and requested that the Commission accept the NITSA as filed.

² The NITSA was originally accepted under a settlement approved by the Commission in a Letter Order issued on February 20, 2000. Florida Power & Light Co., 90 FERC ¶ 61,187 (2000).

Discussion

5. Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene makes Seminole a party to the proceeding.

6. FPL states that the Letter Agreement and proposed revisions to the NITSA resulted from voluntary negotiations that were designed to provide Seminole agreed to credits in its transmission rates, without litigation. FPL asserts that the transmission facilities qualifying for credits are integrated with its system; therefore Seminole is entitled, pursuant to case law, to a credit offset. In addition, FP&L argues that the transmission facilities are used by FPL to provide transmission service to Seminole and other FPL customers and benefit its transmission grid.³

7. Our preliminary review indicates that FPL's unopposed proposal to provide transmission credits appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we shall conditionally accept the proposed Letter Agreement and the revised NITSA for filing without suspension or hearing, subject to the modification ordered below.

8. We find that the second sentence of section 9 of the NITSA, quoted above, would permit FPL to charge cost-based rates (or use rate formulae) that would not be on file with and would not have been reviewed by the Commission. Insofar as this provision violates section 205(c) of the FPA, which requires public utilities to have on file all rates and charges for jurisdictional service, by allowing FPL to charge cost-based rates (or use rate formulae) not filed with and not reviewed by the Commission, it is unjust and unreasonable. We also note that FPL states that it has not issued any work orders nor collected any costs under this provision, nor does it anticipate that it will in the coming year. Therefore, pursuant to section 206 of the FPA, 16 U.S.C. §824e (2000), FPL is directed, in the compliance filing we order below, to delete this sentence in section 9 of the NITSA.

³ Attachment A of Transmittal Letter, Explanatory Statement In Support of Letter Agreement at 2 and 7, respectively.

9. Lastly, consistent with Central Hudson,⁴ and for good cause shown, we grant waiver of the Commission's prior notice requirement so that the revised NITSA and Letter Agreement are effective January 1, 2004, as requested.

The Commission orders:

(A) The proposed Letter Agreement and revised NITSA are hereby conditionally accepted for filing, as modified, as discussed in the body of this order.

(B) FPL is hereby directed to delete the second sentence of section 9 of the revised NITSA and make the appropriate compliance filing within 30 days of the date of this order.

(C) FPL's request for waiver of the Commission's prior notice requirement is hereby granted to permit an effective date of January 1, 2004, as requested.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992) (Central Hudson).